

Hearing Date and Time: TBD
Response Deadline: TBD

Frank Reed
817 Matlack Drive
Moorestown, NJ 08057
Telephone: (856) 956-6950
Creditor, Pro Se

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RESIDENTIAL CAPITAL LLC et al.,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

FILED
U.S. BANKRUPTCY COURT
2016 SEP 27 A 9:08
S.D. OF N.Y.

**MOTION PURSUANT TO F.R.C.P. 45(g) TO COMPEL
COMPLIANCE WITH TRIAL SUBPOENA OR FOR CONTEMPT**

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

Frank Reed ("Reed") hereby respectfully moves the Court pursuant to Federal Rule of Civil Procedure 45(g) to compel non-party compliance with a trial subpoena or for contempt. Specifically, non-party witness Joan Kline was served on September 15, 2016 with a subpoena pursuant to FRCP 45(c)(1) to appear before this Court to provide trial testimony in the evidentiary hearing which began on September 26, 2016.¹ By letter dated September 22, 2016, non-party witness Ms. Kline advised that she would not appear in response to the subpoena because of work obligations.² Ms. Kline's employer also provided a letter dated September 22, 2016 noting Ms. Kline's purported unavailability.³ On September 26, 2016, non-party witness Ms. Kline failed to appear before this Court. The Court indicated that the instant motion should be filed.

Federal Rule of Civil Procedure 45(g) states as follows:

(g) CONTEMPT. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

The 2013 Advisory Committee Notes to FRCP 45(g) state that it is "rare" for a court to use contempt sanctions without first ordering compliance with a subpoena. Civil contempt sanctions generally include fines, and in some extreme cases, imprisonment. See *Painewebber, Inc. v. Acstar Ins. Co.*, 211 F.R.D. 247, 249 (S.D.N.Y. 2002)(fine imposed for failure to comply with deposition and document subpoenas – "[t]he Court has the power under this rule to impose contempt simply on the basis of failure to comply with a subpoena"); *Forum Ins. Co. v. Keller*, No. 91-cv-4528, 1992 WL 297580 (S.D.N.Y. Oct. 8, 1992)(fine imposed for failure to comply

¹ See Subpoena attached to Reed Declaration as Exhibit A. See Affidavit of Service attached to Reed Declaration as Exhibit B.

² See September 22, 2016 Joan Kline letter attached to Reed Declaration as Exhibit C.

³ See September 22, 2016 St. Laurentius School letter attached to Reed Declaration as Exhibit D.

with document subpoena). Civil contempt sanctions are designed primarily to coerce the contemnor into complying with the court's demands. See *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827-30 (1994).

Here, non-party witness has failed to appear to provide testimony at trial, despite the subpoena that was served on her. Accordingly, I respectfully request that the Court grant my motion.

CONCLUSION

Based upon the foregoing, I respectfully request that non-party witness Joan Kline be ordered to comply with the subpoena to appear at trial, or in the alternative, that sanctions for failure to appear be entered by the Court.

Dated: Moorestown, New Jersey
September 26, 2016

Respectfully Submitted,

By: 

Frank Reed, *pro se*

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EXHIBIT A

B2550 (Form 2550) - Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case or Adversary Proceeding (12/15)

UNITED STATES BANKRUPTCY COURT

Southern District of New York

In re Rescap
Debtor

(Complete if issued in an adversary proceeding)

12cad
Plaintiff

GMAC
Defendant

Case No. 12012

Chapter 11

Adv. Proc. No. _____

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: JOAN K Line
(Name of person to whom the subpoena is directed)

☒ **YOU ARE COMMANDED** to appear in the United States Bankruptcy Court at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE <u>SDNY Bankruptcy Court</u> <u>ONE Bowling Green</u> <u>New York NY 10004</u>	COURTROOM <u>523</u>
	DATE AND TIME <u>9/26/16</u> <u>1pm</u>

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/14/2016

Vito Genna
CLERK OF COURT
Minnie L. Porter
Minnie L. Porter
Signature of Clerk or Deputy Clerk

U.S. Bankruptcy Court, S.D.N.Y.
One Bowling Green
New York, N.Y. 10004-1408
OR

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) who issues or requests this subpoena, are:

Frank Reed 856
Frank Reed NJ @ AOL.com 956
17 Matlack Dr 6950
Moorestown NJ

Notice to the person who issues or requests this subpoena 08057

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Exhibit B

B2550 (Form 2550 - Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case or Adversary Proceeding) (Page 2)

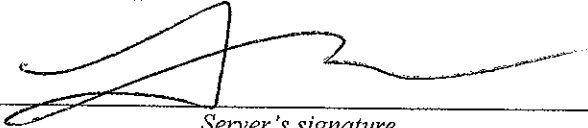
PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any): JOAN KLINE
on (date) 9 14 16☒ I served the subpoena by delivering a copy to the named person as follows: I hand delivered
it to Joan Kline at her home 250 Bree Boulevard Haverhill
Volley, PA on (date) 9 15 16; or☐ I returned the subpoena unexecuted because: _____Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ 88.30.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: 9 15 16

Server's signature
Frank Reed

Printed name and title
817 N. 1st St. P.
MOORESTOWN, NJ 08057

Server's address

Additional information concerning attempted service, etc.:

3/27/16
Page 8 of 10

September 22, 2016

Frank Reed
17 Matlack Drive
Moorestown, NJ 08057

Dear Mr. Reed,

I have received a subpoena to appear in court in the matter of Reed v. GMAC.

Due to unforeseen circumstances I am unable to comply.

The principal of my school is not able to locate a substitute teacher to fill my position on such short notice. Additionally, no other individual but myself can address a group of parents in the evening concerning policies and procedures of my classroom.

If possible, as an alternative to appearing in court, I will testify over the phone from my workplace. Arrangements will be made so that I am available at the designated time to answer questions by the court.

Please accept my apologies.

Sincerely,



Joan Kline
Teacher
Saint Laurentius School
1608 East Berks Street
Philadelphia, PA 19125
Home: 250 Brae Bourn Road
Huntingdon Valley, PA 19006



St. Laurentius School
of Holy Name of Jesus Parish
1612 E. Berks Street
Philadelphia, PA 19125
215-423-8834
www.StLaurentius.org

September 22, 2016

Frank Reed
17 Matlack Drive
Moorestown, NJ 08057

Dear Mr. Reed,

I am the principal of St. Laurentius School. While we certainly like to comply with the Law, in the instance of Miss Joan Kline's subpoena, I must ask you for an alternative solution.

Our school is a small, urban, parochial school in Philadelphia, PA. It is extremely difficult to find a qualified substitute teacher on such short notice. September 26 and September 27 also happens to be "Back to School" night where parents get to meet their child's/children's teacher to learn about the curriculum, procedures, and expectations for the school year. It is vital that Ms. Kline be here for both days, to prepare herself and her classroom for the arrival of parents.

If there is any possibility of finding another way for Ms. Kline's testimony to be handled it would be greatly appreciated.

Sincerely,

Elaine F. McKnight
Mrs. Elaine F. McKnight
Principal

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

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Debtors.

Case No. 12-12020 (MG)

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of Frank Reed's Motion to Compel Compliance pursuant to FRCP 45(g) was served via email and overnight mail to the following:

Joan Kline
250 Brae Bourn Road
Hunting Valley, PA 19006

I further certify that a copy of the foregoing was emailed and mailed by overnight mail on
the date set forth below to the following:

Barbara Hager
REED SMITH LLP
 Attorneys for ResCap Borrower Claims Trust
 Princeton Forrestal Village
 136 Main Street, Suite 250
 Princeton, New Jersey 08540
 Telephone: (609) 987-0050
 Barbara K. Hager, Esq.

Dated: Moorestown, New Jersey
September 27, 2016

Respectfully Submitted,

By:

Frank Reed, *pro se*

Hearing Date and Time: TBD
Response Deadline: TBD

Frank Reed
817 Matlack Drive
Moorestown, NJ 08057
Telephone: (856) 956-6950
Creditor, Pro Se

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RESIDENTIAL CAPITAL LLC et al.,

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**DECLARATION OF FRANK REED
SUBMITTED IN CONNECTION WITH
MOTION PURSUANT TO F.R.C.P. 45(g) TO COMPEL
COMPLIANCE WITH SUBPOENA OR FOR CONTEMPT**

I, Frank Reed, under penalty of perjury, declare as follows:

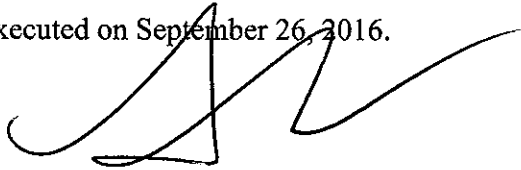
1. I am a claimant and creditor in this action.
2. I submit this Declaration in connection with my motion pursuant to Federal Rule of Civil Procedure 45(g) to compel non-party compliance with a trial subpoena or for contempt.
3. Non-party witness Joan Kline was served with a subpoena on September 15, 2016 to appear before this Court to provide trial testimony in the evidentiary hearing which began on September 26, 2016. See Subpoena attached hereto as Exhibit A. See Affidavit of Service attached hereto as Exhibit B.
4. By letter dated September 22, 2016, Ms. Kline advised that she would not appear in response to the subpoena because of work obligations. See September 22, 2016 Joan Kline letter attached hereto as Exhibit C.

5. Ms. Kline's employer also provided a letter dated September 22, 2016 noting Ms. Kline's purported unavailability. See September 22, 2016 St. Laurentius School letter attached hereto as Exhibit D.

6. On September 26, 2016, non-party witness Ms. Kline failed to appear before this Court as directed in the subpoena.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2016.

A handwritten signature in black ink, appearing to read 'Frank Reed, III', written over a horizontal line.

Frank Reed, III